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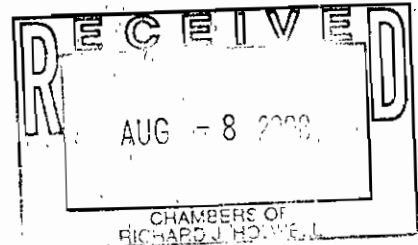
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August 8, 2008

VIA FACSIMILE

Honorable Richard J. Howell  
United States District Judge  
United States District Court  
Southern District of New York  
500 Pearl Street  
New York, New York 10007



Re: Al Banche v. Fischer / 08 Civ: 4751 (RJH)

Dear Judge Howell:

*medical*  
I represent the defendants former Commissioner Goord, Commissioner Fischer and Superintendent Marshall of the New York State Department of Correctional Services in the above-referenced action. I write in response to counsel's letter dated July 28, 2008 wherein counsel contends that plaintiff's lack of exhaustion should be excused because he was told that outside medical services was not *available*. Defendants contend, however, that because he seeks to hold the defendants liable for medical services relating to his treatment from Department employees, plaintiff's argument is without merit.

In accordance with the Court's instructions that the defendants advise the Court whether they still intend to move to dismiss, I write to advise the Court that defendants will move to dismiss on the following grounds: 1) this Court lacks jurisdiction over plaintiff's pendent State Law Claims; 2) plaintiff failed to exhaust his administrative remedies as is required by the Prisoner Litigation Reform Act; 3) plaintiff fails to state a claim for deliberate indifference to his serious medical needs; 4) plaintiff fails to state a claim for a due process violation; 5) plaintiff has failed to allege the personal involvement of the individually named defendants; and 6) the defendants are entitled to qualified immunity.

Defendants propose the following briefing schedule:

Defendants' motion to be served and filed by *Sep. 12* August 20, 2008  
Plaintiff's opposition papers to be served and filed by *October 10* September 17, 2008  
Defendants' reply papers to be served and filed by *Oct 20* October 17, 2008

Wherefore, it is respectfully requested that the Court adopt the above briefing schedule and that all discovery be stayed pending a decision on the motion.

Respectfully submitted,

REBECCA ANN DURDEN  
Assistant Attorney General

cc: Cynthia Conti-Cook, Via facsimile